IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL REVISION APPLICATION NO.191 OF 1997

1.Arun Baburao Kognole
2.Akkatai Baburao Kognole
3.Amol Baburao Kognole
all residents of Valivade,
Tal: Karveer, Dist.Kolhapur ...Applicants.
V/s.
The State of Maharashtra
(At the instance of Karveer
Police Station, Dist.Kolhapur) ...Respondent.

Mr.Niranjan Mundargii/b S.V.Marvadi, advs. for the Applicants.

Ms.M.H.Mhatre, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 8th February, 2007.

ORAL JUDGMENT :

1. The applicants, who are original accused nos.1 to 3, have challenged the conviction for the offences punishable under Sections 498A and 307 read with Section 34 of the I.P.C. in Sessions Case No.1 of 1990 by the learned Assistant Sessions Judge, Kolhapur as well dismissal of their appeal by the Additional Sessions Judge.

2. To state in brief prosecution case is that the complainant Padmavati was married to applicant no.1 Arun on 24th March, 1989. Marriage was settled and solemnised on the same day. For a few days after the

marriage, there was no problem. She also paid visits to her parents' house. During her first visit to parents' house, accused persons did not demand anything. However, when she visited her parents' house on the occasion of Panchami, accused nos.1 to 3 asked her to bring fan, safe and cash of Rs.20,000/- as well as mosquito net from her parents. This demand could not be met. Even her grandfather tried to convince the accused persons that they could not arrange for the said articles. After return of her grandfather, the accused persons started quarrelling with her and started torturing her. Some attempts for the settlement were made. On one occasion, she was taken back by her father P.W.2 Adinath but later on she was taken back to her matrimonial house by her father-in-law. Accused no.2-Akkatai is mother and accused no.3-Amol is brother of accused no.1. It is alleged that on 15th August, 1989 at about 7 or 7.30 p.m., Padmavati was preparing tea for all the family members and they also came near the fire place to take tea. However, abruptly, accused no.2-Akkatai and accused no.3-Amol caught hold of the shoulders of Padmavati and pulled her back. Accused no.1 Arun then poured kerosene on her person on the stomach and set her ablaze with burning sugar-cane stem. She shouted and tried to extinguish the fire. Hearing the shouts, some people from outside also gathered there

and then fire was extinguished by those persons. She was taken to the hospital, where it was found that she had suffered 10% burn injuries on her abdomen and palms. After investigation, all the three accused were put to the trial. On behalf of the prosecution, in all 12 witnesses were examined to prove the offence and to bring home the guilt of the accused persons.

3. It is a plea of the accused that marriage of Padmavati with accused no.1 Arun was hurriedly settled and solemnised on the same day because she wanted to marry some other boy, who was not approved by her parents, due to which she did not like accused no.1 and because of this she attempted to commit suicide by immolating herself. It was also stated that she used to suffer epileptic fits. It was contended that none of the accused persons were present at the spot when she suffered burn injuries because accused nos.1 and 2 were in the cattle shed for milking the cattles and accused no.3 had gone to Jain temple for prayer. In support of the contentions, the accused persons also examined two defence witnesses.

4. After hearing prosecution and defence, the learned Assistant Sessions Judge, Kolhapur came to conclusion that the accused persons had actually

subjected Padmavati to cruelty due to her failure to meet the demands of different articles and that finally in the evening of 15-8-1989, accused persons had attempted to commit murder but fortunately, the fire was extinguished almost immediately and she survived. With these findings, the learned Trial Court convicted the accused persons for the offence punishable under Section 498A and sentenced to undergo R.I. for one year each and to pay fine of Rs.1,000/-. They were also convicted for the offences punishable under Section 307 read with Section 34 of the I.P.C. and were sentenced to undergo R.I. for two years each and to pay fine of Rs.500/- each. Out of the fine amount, if recovered, an amount of Rs.4,000/- was to be paid to Padmavati as compensation.

5. The appellants preferred Criminal Appeal No.50 of 1992 against the conviction and sentence. That appeal came to be dismissed on 20th August, 1997 by the learned IInd Additional Sessions Judge, Kolhapur. Therefore, they have filed this revision application.

6. With the help of learned counsel, I have gone through evidence of the prosecution as well as defence and the reasons given by the Courts below for conviction and sentence. Admittedly, marriage of P.W.1 Padmavati

and accused no.1 Arun was settled and also solemnised on the same day. However, there is no material on record to show that marriage was performed in such circumstances because she wanted to marry some other boy, who was not approved by her parents. Padmavati deposed about the ill treatment at the hands of her husband, mother-in-law, brother-in-law and according to her, they used to ask her to bring fan, safe, mosquito net and an amount of Rs.20,000/-. She conveyed this to her parents and after that her grandfather had been to her husband's house to convince them that he could not manage to meet demands. After that ill-treatment was commenced and on one occasion, she was taken back to her parents' house by her father. Thereafter, her father-in-law took her back to husband's house. Her father P.W.2 Adinath, her brother P.W.3 Rajgonda, her friend P.W.4 Mangal, her sister P.W.6 Seema and P.W.7 Bhupal, who is a neighbour of her parents, have deposed about the ill treatment at the hands of the accused on account of demand. True that there are certain discrepancies about the articles actually demanded in the evidence of these witnesses but by and large their evidence inspires confidence.

7. P.W.1 Padmavati deposed that on the day of incident, in the evening, she prepared tea for all and

called them for tea. The accused persons also came near the fire place for taking tea but all of sudden, her mother-in-law and brother-in-law caught her shoulders and pulled her back and thereafter, her husband, accused no.1, poured kerosene, particularly on abdomen and set her ablaze with burning sugar-cane stem. At that time, she was wearing a wooli saree. She tried to extinguish the fire and also raised shouts. Hearing shouts, people from the locality came there and extinguished the fire. According to her, she became unconscious and on the next day when she regained consciousness, she found herself in the hospital. There are number of witnesses who deposed that she had narrated above story to them. Evidence of P.W.10 Dr.Mane reveals that on 15.8.1989 at about 11 p.m. she was brought to the C.P.R.Hospital by her father Adinath. There were burn injuries on her anterior abdominal wall and on both palms. The burns were superficial with blisters. He assessed the burns to be 10%. It appears that she was in the hospital for about 2 or 3 days. The circumstances under which she was put to fire clearly shows that it was an attempt to murder. The learned Trial Court noted that if she would have immolated herself, kerosene would fall on her chest and there would be burn injuries on the chest, but no such injury was found. Burn injuries on her abdomen corroborates her version. I have also gone through the

evidence of D.W.1 Rajendra Astekar and D.W.2 Uttam Nanasaheb. Their evidence does not appear to be reliable and was rightly rejected by the Courts below. Therefore, no fault can be found in the order of conviction passed by the Trial Court and maintained by the Appellate Court.

8. The learned counsel for the Appellants contended that the incident had occurred almost 17-1/2 years before. At that time, applicant no.1 Arun was about 23 years old while applicant no.3 was about 18 years and their mother was 45 years old. Now, applicant no.2 is a old lady aged about 62-63 years and applicant no.1 appears to be aged about 40 years. The learned counsel for the Appellants, Mr.Mundargi made a statement at bar that about 2 weeks before serious attempt was made to compromise the matter. However, father of Padmavati refused to enter into the dispute anymore as Padmavati is already married with some other person and has settled. Mr.Mundargi contended that instead of sending accused persons to jail after such a long period, sentence may be reduced to as already undergone and they may be required to pay compensation. Taking into consideration these circumstances, I find that as far as accused nos.2 and 3 are concerned, they may be dealt with some leniency. Accused no.2 is a old lady

aged about 62-63 years. In my opinion, for the above referred incident, it will not be desirable to send her to jail now 17-1/2 years after the incident. Similarly, accused no.3 was a young boy of 18 years at the time of incident. It will not be proper to send him in jail after such a long period. As far as accused no.1 is concerned, he was 23 years old when he got married to Padmavati. It was his responsibility to take care of and to protect his wife but on the contrary, he himself set her ablaze after pouring kerosene and burnt her. Therefore, applicant no.1 does not deserve any leniency. The applicant no.2 was in custody from 17-8-1989 to 18.8.1989 and again from 20th August, 1997 to 4th September, 1997. Accused no.3 was in custody from 17.8.89 to 28.8.89 and again from 20.8.97 to 4.9.97. In my opinion, their sentence of imprisonment may be reduced as already undergone and fine amount may be increased so that compensation may be paid to Padmavati. As far as appellant no.1 is concerned, there is no need to interfere in the sentence already awarded by the Courts below.

9. For the aforesaid reasons, the revision application is partly allowed. Conviction and sentence of accused no.1 Arun is hereby maintained and to that extent, revision stands rejected. To the extent of

accused no.2 Akkatai and accused no.3 Amol conviction is maintained for both the charges punishable under Section 498(A) and 307 of the I.P.C. but the sentence stands modified as follows. Accused nos.2 and 3 are hereby sentenced to undergo imprisonment as already undergone and to pay fine of Rs.10,000/- each for the offences punishable under Sections 307 and 498A read with Section 34 of the I.P.C. and in default to pay fine, they shall undergo S.I. for six months each. If fine amount is recovered, an amount of Rs.20,000/- shall be paid to Padmavati as compensation. Fine amount is allowed to be paid within 4 weeks from this date. Accused no.1 to surrender before the Trial Court to undergo sentence.

(J.H.Bhatia,J.)